

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2299

Introduced by Assembly Member Blakeslee

February 18, 2010

An act to add Section 39602.7 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2299, as amended, Blakeslee. State Air Resources Board: rules and regulations: impacts analysis.

Existing law authorizes the State Air Resources Board to regulate pollution from primarily vehicular sources, and designates the state board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases.

This bill would require the state board to complete and place into the rulemaking record a related impacts analysis for a ~~proposed rule~~ *proposed adoption, amendment, or repeal of a major regulation that will have an adverse economic impact on California business enterprises and individuals in an amount exceeding \$10,000,000*, as provided. The bill would authorize a person to request the state board to submit the related impacts analysis for external peer review in accordance with specified requirements. The state board would be authorized to assess a fee on a person making a request for external peer review to cover the administrative costs of processing that request.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 39602.7 is added to the Health and Safety
2 Code, to read:
3 39602.7. (a) For purposes of this section, the following terms
4 have the following meanings:
5 (1) *“Major proposed regulation” means a proposed adoption,*
6 *amendment, or repeal of a regulation that will have an adverse*
7 *economic impact on California business enterprises and individuals*
8 *in an amount exceeding ten million dollars (\$10,000,000), as*
9 *estimated by the state board in the assessment required by*
10 *subdivision (a) of Section 11346.3 of the Government Code.*
11 ~~(1)~~
12 (2) *“Related impacts” means the reasonably identifiable and*
13 *significant impacts of a*~~proposed rule~~ *major proposed regulation,*
14 *that are premised upon, or derived from, empirical data or other*
15 *scientific or economic findings, conclusions, or assumptions;*
16 ~~including, but not limited to, impacts to~~ *regarding any of the*
17 *following:*
18 (A) *Other statutory and regulatory programs and standards,*
19 *under the jurisdiction of the Public Utilities Commission or any*
20 *department within the California Environmental Protection Agency*
21 *or the Natural Resources Agency, whose objectives are likely to*
22 *be impacted by the major proposed regulation or whose objectives*
23 *are likely to impact the implementation of the major proposed*
24 *regulation.*
25 ~~(B) In-state jobs~~ *Short-term and long-term in-state jobs in*
26 *individual sectors of the economy affected by the major proposed*
27 *regulation.*
28 (C) ~~The Revenues to the General Fund~~ *and special funds due to*
29 *changes in economic activity attributable to the major proposed*
30 *regulation.*
31 ~~(2)~~
32 (3) *“Related impacts analysis” means an evaluation of the related*
33 *impacts of a*~~proposed rule~~ *major proposed regulation quantified*
34 *to the extent feasible and appropriate and otherwise qualitatively*
35 *described.*

1 (3) ~~“Rule” means a rule, regulation, order, or standard or the~~
2 ~~amendment, supplement, or revision of a rule, regulation, order,~~
3 ~~or standard, adopted by the state board to implement, interpret, or~~
4 ~~make specific a law enforced or administered by the state board,~~
5 ~~or to govern the state board’s procedure.~~

6 (b) The state board shall complete and place into the rulemaking
7 record for a ~~proposed rule~~ *major proposed regulation* a related
8 impacts analysis for the ~~proposed rule~~ *major proposed regulation*,
9 at or before the time the ~~proposed rule~~ *major proposed regulation*
10 is made available to the public, at a public workshop or for
11 purposes of public comment.

12 (c) (1) Within 15 calendar days after the date the ~~proposed rule~~
13 *major proposed regulation* is made available to the public as
14 described in subdivision (b), a person may request the state board
15 to submit the related impacts analysis ~~created~~ *completed* pursuant
16 to subdivision (b) for external peer review pursuant to this
17 subdivision ~~for any proposed rule determined by the state board~~
18 ~~to have a positive or negative economic impact of at least ten~~
19 ~~million dollars (\$10,000,000).~~ The state board may assess a fee
20 not to exceed five hundred dollars (\$500) on a person making a
21 request pursuant to this paragraph to cover the administrative costs
22 of processing that request.

23 (2) If, within 30 calendar days after making the request, the
24 person requesting the external peer review enters into an
25 enforceable agreement with the state board that requires that person
26 to fully reimburse the state board for all costs associated with
27 conducting the external peer review, the state board shall enter
28 into an agreement with the National Bureau of Economic Research,
29 the University of California, the California State University, or a
30 group of economists of comparable stature and qualifications to
31 conduct the external peer review of the related impacts analysis
32 of the ~~rule proposed for adoption~~ *major proposed regulation*.

33 (d) (1) The state board shall use the process for selecting
34 external peer reviewers adopted pursuant to Section 57004, except
35 as otherwise provided in this subdivision.

36 (2) A person shall not serve as an external peer reviewer
37 pursuant to subdivision (c) if that person participated in the
38 development of the *related* impacts analysis of the ~~proposed rule~~
39 *major proposed regulation, or if that person has a financial interest*

1 *in any entity or person that would be subject to the major proposed*
2 *regulation or has any other conflict of interest.*

3 (3) The person who requests the external peer review pursuant
4 to this section, a person affiliated with that requester, and personnel
5 of the state board shall not participate in the selection of the
6 individual external peer reviewers or contact or communicate with
7 the individual external peer reviewer during the peer review.

8 (4) The state board may contact or communicate with an external
9 peer reviewer for the purpose of entering into a contract with the
10 reviewer, as described in subdivision (c), and for purposes of
11 providing information as described in paragraph (1) of subdivision
12 (e).

13 (5) The identity of the individual external peer reviewers shall
14 remain confidential until the external peer reviewer submits the
15 written report to the state board.

16 (e) If the requirements of subdivision (c) are met, the state board
17 shall not take any action to adopt the final version of a ~~rule~~ *major*
18 *proposed regulation* unless all of the following conditions are met:

19 (1) The state board submits the ~~related proposed rule~~ *major*
20 *proposed regulation*, including the *related* impacts analysis, and
21 other appropriate materials on which the related impacts analysis
22 of the ~~proposed rule~~ *major proposed regulation* are based, to the
23 external peer reviewer for evaluation.

24 (2) The external peer review entity prepares a written report
25 that contains an evaluation of the related impacts analysis within
26 ~~90 days of receiving the materials listed in paragraph (1) from the~~
27 *a time frame determined by the* state board. If the external peer
28 review entity finds that the state board has failed to demonstrate
29 that the related impacts analysis is based upon sound ~~scientific or~~
30 economic knowledge, methods, or practices, the report shall state
31 that finding and the reasons explaining that finding.

32 (3) The state board accepts the finding of the external peer
33 review entity, in whole or in part, and revises the ~~proposed rule~~
34 *major proposed regulation* accordingly, or rejects the finding. If
35 the state board disagrees with any aspect of the findings of the
36 external peer review entity, it shall explain, and include as part of
37 the rulemaking record, its basis for arriving at that determination
38 in the adoption of the final ~~rule~~ *version of the major proposed*
39 *regulation*, including why it has determined that the related impacts

1 analysis is based on sound ~~scientific~~ and economic knowledge,
2 methods, and practices.

3 (4) A public hearing is conducted to provide opportunity for
4 public comment on the written report of the external peer review
5 entity or public comment on the explanation of disagreement with
6 the report included in the rulemaking record by the state board.
7 The state board shall not issue notice of a public hearing on
8 adoption of the final version of ~~a rule~~ *the major proposed*
9 *regulation* until the public hearing described in this paragraph has
10 concluded.

11 (f) Notwithstanding subdivision (e), if the external peer review
12 entity fails to provide a written report within ~~90 days~~ *the time frame*
13 *determined by the state board pursuant to paragraph (2) of*
14 *subdivision (e)*, the state board may act to adopt the final version
15 of the ~~rule~~ *major proposed regulation*.

16 (g) The requirements of this section do not apply to an
17 emergency regulation adopted pursuant to subdivision (b) of
18 Section 11346.1 of the Government Code.

19 (h) This section shall not be construed to limit the authority of
20 the state board to adopt a ~~rule~~ *regulation* pursuant to the
21 requirements of any other law that authorizes or requires the
22 adoption of the ~~rule~~ *regulation*.

23 (i) *Once an external peer review of the related impacts analysis*
24 *has been completed pursuant to this section, the state board is not*
25 *required to conduct additional peer reviews pursuant to this*
26 *section.*